

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 18-80168-CR-MIDDLEBROOKS/BRANNON**

**UNITED STATES OF AMERICA**

**v.**

**ETHAN MARCUS WAYNE,**

**Defendant.**

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**FACTUAL PROFFER**

Defendant Ethan Marcus Wayne, his counsel, and the United States agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt, and that the following facts are true and correct and are sufficient to support a plea of guilty:

1. At all times relevant to the Information, substance abuse treatment was regulated under state and federal law.

2. The Federal Employees Health Benefits Program (“FEHBP”) provided medical benefits, items and services to federal employees and their dependents, including substance abuse services. The United States Office of Personnel Management (“OPM”) managed the FEHBP and contracted with various insurance companies to offer these benefits. FEHBP reimbursed those insurance companies out of government funds for the money the insurance companies paid out for medical benefits, items and services for federal employees and their dependents. BlueCross/BlueShield (BCBS) was one of the various insurance companies contracted by the Office of Personnel Management to offer medical benefits, items and services to federal employees under the FEHBP.

3. The National Railroad Passenger Corporation, doing business as Amtrak (“Amtrak”), was a private, for profit, Government corporation, that operated a nationwide system of passenger rail transportation. As part of its employee benefits package, Amtrak established employee health and welfare benefit plans to provide healthcare to their employees, including their spouses, domestic partners, and dependent children (collectively, “dependents”).

4. Both ERISA and non-ERISA health benefit plans, including ACA plans, were offered or administered by private insurance companies, including Blue Cross/Blue Shield, Aetna, Cigna Behavioral Health, Cigna Health & Life Insurance Company, United Behavioral Health, and United Health Group.

5. All of these health benefit plans were “health care benefit programs,” as defined in Title 18, United States Code, Section 24(b), that is, “public or private plans or contracts, affecting commerce, under which any medical benefit, item or service is provided to any individual.”

6. Regardless of the type of plan held by a patient, the amount of coverage and terms and conditions of billing and payment were governed by the terms of the individual’s insurance documents, and the insurance company administering the plan had the authority, responsibility, and discretion to make coverage determinations and to process and make payments on claims.

7. Under state and federal law, health benefit plans were only responsible for claims for services that: (a) were “medically necessary,” (b) were actually rendered; (c) were provided by a properly licensed service provider, and (d) complied with the terms of the health care plan, including the obligation to pay co-insurance and deductibles.

8. Bodily fluid testing could be used to detect recent drug or alcohol use by a client by conducting various tests on a client’s urine, blood, and saliva. Urine Analysis or urinalysis (“UA”) testing complexity ranged from screening tests – also known as point of care (“POC”) testing – which provided instant results, to confirmatory testing, which was sent to a laboratory, for more complex analysis. Laboratories could also conduct complex analysis on blood and saliva samples.

9. Like other medical tests, bodily fluid testing could be billed to insurance and reimbursed pursuant to the terms of the insurance policy. Insurance companies were only responsible for claims for testing that were “medically necessary,” actually performed, prescribed, and conducted by a properly licensed service provider, and conducted and billed in compliance with the terms of the health care plan and state and federal law, including the obligation to pay co-insurance.

10. Defendant Ethan Marcus Wayne (Wayne) is an attorney licensed to practice in the State of Florida. Wayne is one of the managing members of Smart Lab LLC (Smart), which is located in Palm Beach Gardens, Florida, in Palm Beach County, in the Southern District of Florida. At all times relevant to the Information, Wayne worked full-time as a personal injury attorney. Wayne had no training or experience in urinalysis testing, the clinical laboratory business, health care or laboratory law, or any aspect of substance abuse treatment.

11. Reflections Treatment Center (Reflections) was located at 5100 Coconut Creek Parkway, Margate, Florida, in Broward County, in the Southern District of Florida. Reflections purported to operate as a licensed “substance abuse service provider” or “treatment center” that is, it purportedly offered clinical treatment services for persons suffering from alcohol and drug addiction. Laura Chatman was the nominee owner of Reflections, although Kenneth Chatman was the true owner and made all financial decisions.

12. Smart Lab LLC (Smart) is located at 10385 Ironwood Road, Suite 130, Palm Beach Gardens, Florida, in Palm Beach County, in the Southern District of Florida. Smart offers bodily fluid testing services including confirmatory urinalysis testing. On October 19, 2015, Reflections started using Smart to perform urine confirmatory drug testing after Kenneth Chatman was paid a bribe to begin using Smart’s services and was promised kickbacks in exchange for referring all of

Reflections' urinalysis testing to Smart. To facilitate these kickbacks, Smart paid "sales representatives" a "commission" for each urine sample that Reflections and other treatment facilities referred to the lab for testing. These "sales reps" did not perform services for Smart. Instead they served as intermediaries for paying kickbacks to clinic owners for referrals. These payments to the sales reps were actually illegal kickbacks paid directly or indirectly to owners or employees of treatment facilities that were disguised as sales commissions. Smart billed private insurance companies as much as \$6,200 for testing a single urine specimen and did not disclose to the insurers that the tests were solicited through the payments of bribes and kickbacks.

13. Smart prepared "standing orders" for Reflections that called for Smart to run every available urinalysis test three times per week. Reflections used medical directors who were willing to sign these standing orders even though some tests were not medically necessary and were not used to direct the patients' medical treatment. Smart submitted claims to numerous health benefit plans for the unnecessary and excessive urinalysis testing. Smart also was aware that many of the urine samples from Reflections and other entities were not legitimate, that is, the testing revealed that: (a) samples did not come from the stated patients, (b) patients were actively using illegal drugs; and (c) patients who had not been using drugs when they started at Reflections had begun using drugs while allegedly in treatment. Despite this knowledge, Smart submitted these fraudulent claims to the health benefit plans and received proceeds in interstate commerce that were deposited into Smart's bank account at Wells Fargo Bank.

14. Smart entered into an agreement that 50% of the insurance reimbursements would be paid to the "sales representatives" for the treatment centers that sent their urine sample for testing. These payments were classified as commissions, when in reality they were kickbacks for the referral of excessive, medically unnecessary, fraudulent, and duplicate confirmatory drug testing.

15. On or about March 8, 2016, after a meeting and subsequent emails between Wayne and a "sales representative" for Smart Lab, Wayne approved an agreement for Smart to pay outstanding insurance proceeds, that is, proceeds of the health care fraud scheme, that were due to persons pretending to be "sales representatives" for the Reflections account. Wayne approved a payment from Smart to M.H., one of these purported "sales representatives" for Reflections, in the amount \$85,000, which represented approximately 80% of the pending insurance proceeds related to testing of Reflections patients. On or about March 10, 2016, a direct deposit in the amount of \$51,610.54 from Smart's Payroll account was deposited into M.H.'s personal bank account number XXXXXX5272 at Sabadell United Bank. This amount was related to the above approved amount less withholdings for taxes.

16. The proceeds of the health care fraud and kickback schemes were deposited into a bank account that M.H. had at Sabadell United Bank. Sabadell United Bank is a domestic financial institution as defined by federal law involved in interstate commerce. The deposit of the health care fraud proceeds into bank accounts controlled by Smart and the disbursement of those funds to M.H. to and through Sabadell United Bank affected interstate commerce.


17. The funds deposited to the account of M.H. at Sabadell United Bank, that is, the \$51,610.54, were utilized to make kickback payments to Chatman in exchange for sending urine drug testing to Smart and promoted the ongoing fraud scheme.

ARIANA FAJARDO ORSHAN  
UNITED STATES ATTORNEY


Date: 9/25/18

By:   
A. MARIE VILLAFANA  
ASSISTANT UNITED STATES ATTORNEY

Date: 9/25/18

By:   
ANTHONY C. VITALE, ESQ.  
ATTORNEY FOR DEFENDANT

Date: 9/25/18

By:   
ETHAN MARCUS WAYNE, DEFENDANT